

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JOHN W. CORBETT**  
Claimant

VS.

**BEECH AIRCRAFT**  
Respondent

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Docket No. 165,775

**ORDER**

**ON** the 11th day of August, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of an Order for attorney's fees entered by Administrative Law Judge John D. Clark, dated June 14, 1994, and an Order Nunc Pro Tunc of Administrative Law Judge John D. Clark on June 15, 1994, came on for oral argument by telephone conference.

**APPEARANCES**

The claimant appeared in his own behalf, having terminated his employment of contract with his attorney. Claimant's former attorney, James Zongker of Render, Kamas and Hammond, appeared in his own behalf. The respondent, a qualified self-insured appeared not, having resolved its disputes with claimant prior to this attorney's fee dispute. There were no other appearances.

**RECORD**

The record consists of the transcript of Regular Hearing dated April 18, 1994; the deposition of Michael Estivo, D.O., dated May 10, 1994; the deposition of Jerry D. Hardin, dated April 27, 1994; the transcript of Settlement and the exhibits attached thereto, dated May 27, 1994; and, the exhibits attached and offered into the evidence by the parties; and the pleadings and correspondence contained in the administrative file.

**ISSUES**

Whether the Order of Administrative Law Judge John D. Clark, dated June 14, 1994, as amended by the Order Nunc Pro Tunc of June 15, 1994 by Administrative Law Judge John D. Clark, awarding attorney's fees to Mr. James Zongker, attorney for the claimant, is appropriate.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, and in addition the Hearing for Settlement and consideration of the arguments of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The claimant, John W. Corbett, having terminated his employment with his attorney on May 16, 1994, entered into a compromise settlement of his claim against Beech Aircraft Corporation on May 27, 1994. Subsequent to that Settlement Hearing, Administrative Law Judge John D. Clark awarded attorney's fees to James Zongker, the attorney for the claimant, based upon the \$20,000.00 offer of settlement last made by Beech Aircraft Corporation to Mr. Corbett while he was still represented by Mr. Zongker. Mr. Corbett, appearing on his own behalf, argues the attorney's fees awarded to Mr. Zongker, representing twenty-five percent (25%) of the \$20,000.00 final offer after deduction of expenses, is too much and should be reduced. In support of his position, Mr. Corbett cites disagreements between himself and his attorney, and moments of mis-communication and lack of communication between himself and his attorney. He requests the Appeals Board reduce the attorney's fee award by fifty percent (50%).

Mr. Zongker provided to the Court a copy of the attorney's fee contract signed by Mr. Corbett and Mr. Zongker on April 29, 1992, the terms of which grant to the attorney a sum equal to twenty-five percent (25%) of the gross amount recovered in this matter plus certain out-of-pocket expenses which may be incurred by the attorney. Mr. Zongker alleged he provided appropriate representation, including letters to the respondent and respondent's attorney which resulted in advances by respondent to the claimant of \$500.00 on one occasion and \$1,000.00 on another occasion, no portion of which was or is claimed by Mr. Zongker. The record reflects Mr. Zongker, or someone from his office, represented claimant at each of the evidentiary depositions and at the regular hearing during the litigation of this claim. The representation by Mr. Zongker continued from April 29, 1992, the date of the contract of employment, through May 16, 1994, the date this contract was terminated by the claimant. This termination of employment, which occurred on May 16, 1994, occurred eleven (11) days prior to the settlement of this matter between claimant and Beech Aircraft Corporation. At the time of the final settlement in this claim, the issues between the claimant and respondent had been fully litigated and the matter was ripe for submission to the Administrative Law Judge for decision.

In his award of attorney's fees, the Administrative Law Judge granted Mr. Zongker twenty-five percent (25%) of the \$20,000.00 after the deduction of certain expenses. This matter was settled between the claimant and the respondent for a lump sum payment of \$22,500.00 to the claimant. The additional \$2,500.00 which exceeded the offer made to Mr. Zongker is not considered in the attorney's fee award and Mr. Zongker makes no claim for any portion of that money.

K.S.A. 44-536(a) states in part:

"With respect to any and all proceedings in connection with any initial or original claim for compensation, no claim of any attorney for services rendered in connection with the securing of compensation for an employee or the employee's dependents, whether secured by agreement, order, award or a judgment in any court shall exceed a reasonable amount for such services or 25% of the amount of compensation recovered and paid, whichever is less, in addition to actual expenses incurred, and subject to the other provisions of this section."

K.S.A. 44-536(b) states in part:

"The director shall specifically and individually review each claim of an attorney for services rendered under the workers compensation act in each case of a settlement agreement under K.S.A. 44-521 and amendments thereto or a lump-sum payment under K.S.A. 44-531 and amendments thereto as to the reasonableness thereof. In reviewing the reasonableness of such claims for attorney fees, the director shall consider the other provisions of this section and the following:

- (1) The offers of settlement made prior to litigation;
- (2) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly;
- (3) the likelihood, if apparent to the employee or the employee's dependents, that the acceptance of the particular case will preclude other employment by the attorney;
- (4) the fee customarily charged in the locality for similar legal services;
- (5) the amount of compensation involved and the results obtained;
- (6) the time limitations imposed by the employee, by the employee's dependents or by the circumstances;
- (7) the nature and length of the professional relationship with the employee or the employee's dependents; and
- (8) the experience, reputation and ability of the attorney or attorneys performing the services."

In this litigated matter, representation of the claimant continued from April 29, 1992 through May 16, 1994. Within eleven (11) days of the termination of the attorney-client agreement, the claimant settled this matter in a sum, not identical but very similar to the final settlement offer received by Mr. Zongker while representing the claimant. At the time of the settlement the litigation had been concluded, the depositions and hearings finalized, and the matter was ready for submission to the Administrative Law Judge.

The Appeals Board finds the Order of Administrative Law Judge John D. Clark, being based upon the \$20,000.00 settlement offer last made by Beech Aircraft to the claimant while being represented by Mr. Zongker, after the deduction of certain expenses, was and is appropriate and is affirmed.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark, dated June 14, 1994, and a Nunc Pro Tunc Order by Administrative Law Judge John D. Clark, dated June 15, 1994, should be and is affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: John W. Corbett, 430 N. Harding, Wichita, KS 67208  
James Zongker, PO Box 47370, Wichita, KS 67201-7370  
John D. Clark, Administrative Law Judge  
George Gomez, Director